**HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES**
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# HOUSE RESEARCH ORGANIZATION

## daily floor report

Thursday, April 30, 2015
84th Legislature, Number 60
The House convenes at 10 a.m.
Part Two

Twenty bills and one joint resolution are on the daily calendar for second-reading consideration today. The bills analyzed in Part two of today's *Daily Floor Report* are listed on the following page.

The House will consider a Local, Consent, and Resolutions Calendar.

Alma Allen
Chairman
84(R) - 60

**HOUSE RESEARCH ORGANIZATION**

Daily Floor Report

Thursday, April 30, 2015

84th Legislature, Number 60

Part 2

SUBJECT: Revising process for contesting environmental permit applications

COMMITTEE: Environmental Regulation — committee substitute recommended

VOTE: 7 ayes — Morrison, Isaac, Kacal, K. King, P. King, Lozano, E. Thompson

2 nays — E. Rodriguez, Reynolds

WITNESSES: For — Richard Mason, Shintech, Inc.; Christina Wisdom, Texas Association of Manufacturers; Stephen Minick, Texas Association of Business; Hector Rivero, Texas Chemical Council; Derek Seal, Texas Oil and Gas Association; Leigh Thompson, Texas Public Policy Foundation; (*Registered, but did not testify*: Tristan Castaneda, Jr, Allergan, Ford Motor Company; Gary Gibbs, American Electric Power Company; Carolyn Brittin, Associated General Contractors of Texas; Jacob Arechiga, Balanced Energy for Texas Coalition; Charlene Heydinger, BP; Jim Grace, Centerpoint Energy; Julie Williams, Chevron; Steve Perry, Chevron USA; Kinnan Golemon, Devon Energy, Shell Oil Company, Austin White Lime, Gulf Coast Waste Disposal Authority; Warren Mayberry, DuPont; Craig Beskid, East Harris County Manufacturers Association (EHCMA); Diane Davis, East Texas Against Lawsuit Abuse; Grant Ruckel, Energy Transfer; Samantha Omey, ExxonMobil; Kelly McBeth, Gas Processors Association; Mark Borskey, General Electric; Wendy Reilly, HID Global; Mike Meroney, Huntsman Corp., BASF Corp., and Sherwin Alumina, Co.; Dan Mays, Kinder Morgan; Bill Oswald, Koch Companies; Mindy Ellmer, LyondellBasell Industries; Ben Sebree, Marathon Petroleum Corporation; Kaylyn Seawell, MeadWestvaco; Parker McCollough, NRG Energy, Inc.; Randy Cubriel, Nucor; Julie Moore, Occidental Petroleum; Neftali Partida, Phillips 66; Chris Shields, Praxair, San Antonio Chamber of Commerce, Tenaska; Ed Longanecker, Texas Independent Producers and Royalty Owners Association;; Mike Hull, Texans for Lawsuit Reform; Rich Szecsy, Texas Aggregate and Concrete Association; Bill Stevens, Texas Alliance of Energy Producers; David Mintz, Texas Apartment Association; Richard A. (Tony) Bennett, Texas Association of Manufacturers; George Christian and Lisa Kaufman, Texas Civil Justice League; Jeff Brooks, Texas

Conservative Coalition; Thure Cannon, Texas Pipeline Association; Celina Romero, Texas Pipeline Association; John W Fainter Jr, The Association of Electric Companies of Texas, Inc.; Amy Beard, The Boeing Company; Daniel Womack, The Dow Chemical Company; Tanya Vazquez, Toyota Motor North America; Larry McGinnis, US Steel; Julie Klumpyan, Valero; Tara Snowden, Zachry Corporation; Scott Stewart, Zachry Group; Greg Macksood)

Against — Adrian Shelley, Air Alliance Houston; Maren Taylor, Alliance for a Clean Texas (ACT); Eric Allmon, Frederick, Perales, Allmon & Rockwell, P.C.; Cathy Sisk, Harris County; Madeleine Crozat-Williams, Houston Peace and Justice center; Cyrus Reed, Lone Star Chapter Sierra Club; Myron Hess, National Wildlife Federation; Carol Birch, Public Citizen; Tom "Smitty" Smith, Public Citizen; Elizabeth Riebschlaeger, Sisters of Charity of the Incarnate Word of San Antonio; Elise Wood, Stop Dripping Concrete; Andrew Dobbs, Texas Campaign for the Environment; David Weinberg, Texas League of Conservation Voters; and seven individuals; (*Registered, but did not testify*: Richard Lowerre, Caddo Lake Institute; David Foster, Clean Water Action; Dewayne Quertermous, Fort Worth Sierra Club; Christy Muse, Hill Country Alliance; Chris Frandsen, League of Women Voters of Texas; Kelly Davis, Save Our Springs Alliance; Arthur Browning, Sierra Club, Houston Regional Group; Jeffery Patterson, Texas Catholic Conference of Bishops; Byron Friedrich; Evelyn Merz)

On — Karen Darcy; (*Registered, but did not testify*: Robert Martinez, Texas Commission on Environmental Quality)

BACKGROUND: The Texas Commission on Environmental Quality (TCEQ) requires individuals or companies that wish to engage in certain types of projects or operations that could affect environmental quality to apply for and obtain approval of certain types of authorizations, including individual permits. A person or group who believes they will be adversely affected by such a project may contest the issuing of such an individual permit by requesting a hearing called a contested case hearing.

Government Code, sec. 2003.047 establishes the natural resource conservation division of the State Office of Administrative Hearings,

which is charged with performing contested case hearings for the Texas Commission on Environmental Quality (TCEQ). Hearings are conducted by an administrative law judge within the division on behalf of the commission.

Chapter 5 of the Water Code contains provisions which govern some aspects of TCEQ's case contesting process, including a request for a contested case hearing, a description of a person affected in relation to a contested case hearing, and public meetings and public comment periods related to the contested case hearing process.

DIGEST:

CSHB 1865 would make various changes to the process for contesting environmental permits before they are issued as final by the Texas Commission on Environmental Quality (TCEQ).

**List of disputed issues.** With regard to a request to reconsider the executive director's decision on a permit or to hold a contested case hearing, CSHB 1865 would require that each of the disputed issues referred by the commission and provided to the administrative law judge for consideration have been raised by an affected person and submitted in a comment by that person in a timely manner. The list of issues would also have to be detailed and complete and include either factual questions only or mixed questions of fact and law.

**Timeframe.** CSHB 1865 would establish a time limit following the preliminary hearing by which the administrative law judge would have to complete the contested case proceeding and provide a proposal for decision to the commission regarding the case. This limit would be the earlier of 180 days or the date specified by TCEQ at the preliminary hearing, unless the judge specified a later date after determining that failure to grant the extension would deprive a party of a constitutional right.

**Applicant's draft permit and rebuttal.** CHSB 1865 would establish that the draft permit as prepared and preliminarily approved by the TCEQ, along with other supporting documentation submitted in the application process, would serve as a prima facie demonstration that the permit application met necessary legal and technical requirements and that it

would protect human health and safety, the environment, and property. A party could rebut this demonstration by presenting evidence under certain circumstances. The bill would allow the applicant and the executive director of the commission to respond by presenting additional evidence supporting the draft permit.

**Persons affected.** CSHB 1865 would establish factors the commission could consider in determining whether a person or association was a person affected by the draft permit for purposes of the contested case hearing process. These would include:

- the merits of the underlying application, including whether it met the requirements for permit issuance;
- the likely impact of the permitted activity on the hearing requestor's health, safety, and use of property;
- the administrative record, including the permit application and other documentation;
- the analysis and the opinions of the TCEQ executive director; and
- other relevant information.

TCEQ could not find that:

- a group or association was an affected person unless the group or association timely identified by name and address a member who would be a person affected in the person's own right; or

- a hearing requestor was an affected person unless the requestor timely submitted comments on the permit application.

CSHB 1865 would require TCEQ to adopt rules to implement the provisions in the bill by January 1, 2016.

This bill would take effect September 1, 2015, and would apply only to a permit application filed on or after that date.

SUPPORTERS SAY:

By shortening the time during which a contested case hearing could occur, CSHB 1865 would provide more certainty for companies seeking

environmental permits as part of building or expanding their facilities or operations. The current process is not predictable and can last much longer than six months. This can have an adverse impact on economic growth and can deter companies from locating in Texas because other states have different processes that may allow them to issue permits within a more predictable timeframe.

The bill would create other limitations on the contested case process that would make it fairer and more balanced. For example, the bill would clarify that if TCEQ had already issued a preliminary decision on an applicant's permit application and met other related requirements, this would serve as adequate evidence that the permit met necessary requirements and would be adequate to protect health, safety, property and the environment for purposes of the contested case hearing. Previously, applicants whose permits were being contested typically presented information to show that they had met these requirements to the administrative law judge, even if their applications already had received a level of approval by TCEQ.

The bill also would ensure that those contesting the permit application were personally affected and had been participating in the process prior to contesting a specific case. In the past, associations or groups could be considered affected even if no individual person could be identified that was affected in his or her own right early in the process. The bill therefore would discourage groups from inappropriately contesting cases to further a broad agenda or for frivolous reasons.

TCEQ already does a thorough review of applications for environmental permits, and applicants must spend time and resources to satisfy and participate in that process. This bill would shorten the contested case process when it occurred and would create greater efficiency for everyone involved by ensuring that concerns surfaced early in the process for legitimate and specific reasons and that all parties knew who was raising concerns.

OPPONENTS SAY:

CSHB 1865 would further limit public participation in a process in which concerned people have few tools to oppose the building or expansion of a facility that they believe could harm the environment, their health, or their

property. Tightening the time period during which a case could last and placing additional restrictions on who could be considered an affected party — as well as which types of issues could be raised during the process — would increase the risk that problems with a permit would not be identified, possibly resulting in harm to the environment and public health.

The bill would shift the burden of proof onto those protesting a permit and away from those applying for the permit in a contested case, even though companies trying to obtain permits have the advantage of time and resources to make their case as compared to average citizens. This is of special concern to individuals who live in rural, unincorporated areas because counties have limited power to prohibit incompatible land uses. As a result, citizens who might not be schooled in law or have the resources to hire an attorney must rely on the contested case process to protect their rights and property. Placing the burden on the party contesting the permit to disprove the applicant's evidence — rather than requiring the applicant to prove that the proposed project was not harmful — would change the nature of the process.

The bill would reduce the number of people who could contest a case as persons affected, even if they would indeed be affected, either because the person did not know about or participate in the process early enough or because the person did not articulate the issues in the right way at the right time. The changes to the public participation process could affect the federal delegation of authority of the permitting process from the Environmental Protection Agency to TCEQ.

The imposition of a 180-day time limit represents a "one-size-fits-all" approach that would not be appropriate in all cases and might not allow enough time for meaningful discovery, presentation of evidence, and adequate analysis of all the information presented in a complex case. By some estimate, contested cases in Texas last about 245 days on average. Shortening the length of that process greatly would reduce its effectiveness in terms allowing environmental concerns to surface.

The contested case process often results in improvements to the permit instead of resulting in its denial. By introducing a more restrictive process

and a limit of 180 days for contested cases, the bill would increase the chance that permits were approved or issued based on bad information or faulty analysis, which would erode the protections offered through the process.

NOTES:

The Senate companion bill, SB 709 by Fraser, was approved by the Senate and reported favorably from the House Environmental Regulation Committee on April 28.

SUBJECT: Certification requirements for teachers in bilingual education

COMMITTEE: Public Education — committee substitute recommended

VOTE: 9 ayes — Aycock, Allen, Deshotel, Dutton, Galindo, González, Huberty, K. King, VanDeaver

0 nays

2 absent — Bohac, Farney

WITNESSES: For — Pauline Dow, Austin ISD; Laila Ferris and Cynthia Montes-Bustamante, El Paso ISD; Vivian Pratts, Spring Branch ISD; Jesse Romero, Texas Association for Bilingual Education; (*Registered, but did not testify*: Kate Kuhlmann, Association of Texas Professional Educators; Ted Melina Raab, Texas American Federation of Teachers; Nelson Salinas, Texas Association of Business; Colby Nichols, Texas Association of Community Schools and Texas Rural Education Association; Casey McCreary, Texas Association of School Administrators; Dominic Giarratani, Texas Association of School Boards; Melva V. Cardenas, Texas Association of School Personnel Administrators; Maria Whitsett, Texas School Alliance; Portia Bosse, Texas State Teachers Association; Suzanne Mercado)

Against — None

On — (*Registered, but did not testify*: Monica Martinez and Tim Miller, Texas Education Agency)

BACKGROUND: Districts with enrollment of 20 or more students of limited English proficiency in any language classification in the same grade level are required by Education Code, sec. 29.053(c) to offer a bilingual education or special language program.

Sec. 29.061(b) requires a teacher assigned to a bilingual education program to be certified for bilingual education by the State Board for Educator Certification and sec. 29.061(c) requires a teacher assigned to an

English as a second language (ESL) or other special language program to be certified for ESL.

Administrative Code, sec. 89.1210(d) requires bilingual education be implemented through one of the following programs:

- transitional bilingual/early exit;
- transitional bilingual/late exit;
- dual language immersion/two-way; or
- dual language immersion/one-way.

Sec. 89.1207 allows school districts to apply to the education commissioner for an exception to the bilingual program and the approval of an alternate program.

DIGEST:

CSHB 218 would make changes to Education Code, sec. 29.061 regarding required certifications for teachers in certain bilingual programs, beginning with the 2015-16 school year.

The bill would allow a teacher assigned to a bilingual education program using a dual language immersion/one-way or two-way program model to be certified for:

- bilingual education for the component of the program provided in a language other than English; and
- bilingual education or ESL for the component of the program provided in English.

A district that uses a dual language immersion/one-way or two-way program would be allowed to assign a teacher certified in bilingual education for the language other than English component and a different teacher certified in ESL for the English language component.

The bill would require teachers to be certified for bilingual education for transitional bilingual/early exit program models or transitional bilingual/late exit program models.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 218 would help address a shortage of teachers certified in bilingual education by allowing districts flexibility to staff the English component of dual language programs with teachers who were certified in ESL. In dual language programs, students receive instruction in both English and Spanish, or another language. A two-way program integrates students proficient in English and students identified as limited English proficient. A one-way program serves only students identified as limited English proficient.

Teachers certified in ESL are well qualified to teach the English component of a dual language two-way program. Districts have had success using this teaching model to integrate student populations and help students achieve biliteracy in English and Spanish or another language. The bill would remove an unnecessary barrier to the model and save districts time spent requesting an exception for their programs each school year.

Texas has more than 860,000 English language learners — about 90 percent of whom are Spanish speakers — and the number is increasing every year. Over the next few years, Texas is expected to need more than 11,000 additional teachers who are prepared to help these students. Some educators worry that Texas has made it too difficult for teachers to achieve bilingual certification. The bill would allow teachers certified in bilingual education and those certified in ESL to team teach so that more students could be served in dual language two-way programs.

OPPONENTS SAY:

CSHB 218 would do little to help the growing population of English language learners, who need to be taught by teachers who are trained in academic Spanish and the best methods of delivering bilingual instruction. The bill would not address the underlying problem of the state's shortage of certified bilingual teachers. Although the test for bilingual certification may be challenging, it is designed to determine if a teacher has sufficient proficiency to help students achieve Spanish literacy. If it is the state's philosophy to focus on dual-language programs in which students must

learn to read, write, and speak in Spanish, it is critical to have teachers who know more than conversational Spanish.

NOTES: The Senate companion bill, SB 159 by Rodriguez, passed the Senate by a vote of 30-0 on April 1.

SUBJECT: Expanding credit transfer policies for higher education institutions

COMMITTEE: Higher Education — committee substitute recommended

VOTE: 7 ayes — Zerwas, Howard, Clardy, Martinez, Morrison, Raney, C. Turner

1 nay — Crownover

1 absent — Alonzo

WITNESSES: For — Rey Garcia, Texas Association of Community Colleges; Justin Yancy, Texas Business Leadership Council; (*Registered, but did not testify*: Dana Harris, Austin Chamber of Commerce; Dwight Harris, Texas American Federation of Teachers; Nelson Salinas, Texas Association of Business; Casey Smith, United Ways of Texas)

Against — Roberto Zarate, Community College Association of Texas Trustees

On — John Fitzpatrick, Educate Texas; Aubrey Wynn Rosser, Greater Texas Foundation; (*Registered, but did not testify*: Rex Peebles, Texas Higher Education Coordinating Board)

BACKGROUND: Education Code, ch. 61, subch. S governs transfer of credit between higher education institutions and requires the Texas Higher Education Coordinating Board to encourage the transferability of lower-division course credit among institutions.

Under sec. 61.822, institutions of higher education are required to work with advisory committees composed of representatives of higher education institutions to develop a 42-credit-hour core curriculum that, if completed by students, can be fully transferred as a block to any other institution. The receiving institution is required to give academic credit for each of the courses transferred. If a student does not complete the entire core curriculum at the student's initial institution, the receiving school must award academic credit for each of the courses the student has

successfully completed in the core curriculum.

DIGEST:

CSHB 298 would make various changes to Education Code provisions affecting the transferability of credits to the state's general academic teaching institutions from public junior colleges, public state colleges, and public technical institutes.

**Core curriculum advisory committees.** The coordinating board, with the assistance of advisory committees, would develop a course-specific core curriculum for each broad academic discipline within the general core curriculum and identify degree programs at higher education institutions to which the course-specific core curriculum, if successfully completed by a student at another institution, would be fully transferable.

CSHB 298 would change the composition of these advisory committees by allowing the coordinating board to appoint administrators of institutions of higher education.

**Articulation agreements.** CSHB 298 would require the state's general academic teaching institutions to establish articulation agreements for at least five degree plans with each public junior college from which the general academic teaching institution had received an average of at least 5 percent of the institution's transfer students during the three preceding years. The degree plans would be those for which credit was frequently transferred to the institution from the junior college. The bill would not affect admissions policies at general academic teaching institutions.

**Publication of requirements.** The bill also would require general academic teaching institutions to publish online for prospective students a detailed description of learning objectives, content, and prior knowledge requirements for at least 12 courses offered by the institution for which credit was frequently transferred to the institution from lower-division institutions of higher education.

**Accrediting agency for semester credit hours requirements.** To earn a baccalaureate or associate's degree, a student could not be required by an institution of higher education to complete more than the minimum number of credit hours required for the degree by the institution's

accrediting agency unless there were a compelling academic reason. The bill would substitute "the institution's board-recognized accrediting agency" for the current "Southern Association of Colleges and Schools or its successor."

**Effective dates.** By May 31, 2017, institutions would be required to establish articulation agreements and publish online information on credit transfer policies for the required 12 courses. The coordinating board would be required to develop the course-specific core curricula by the same date.

The Texas Higher Education Coordinating Board would adopt rules to administer the provisions of the bill.

CSHB 298 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 298 would help students transfer more of their credits from community colleges to four-year institutions and earn baccalaureate degrees. Many Texas students begin their higher education at community colleges, highlighting their importance as the gateway to a four-year degree.

The current pathway for community college students into baccalaureate programs can be inefficient and unclear. While some studies indicate that most community college students intend to transfer to a four-year institution, only a small number actually do. Despite efforts to channel student learning, many transfer students still end up transferring few credits, accumulating more credits than they can effectively transfer, or transferring credits that do not count toward a degree. This can increase tuition costs, extend the time to degree completion, or encourage students to drop out. By making the transfer process between schools more transparent and efficient, this bill could help increase the ability of students to transfer credits directly toward a major.

Providing information about the junior college course credits institutions would accept as credit would help students make informed choices about

the school to which they should transfer. This would help address Texas' growing need for a college-educated workforce because the more credits a student is able to transfer from junior college, the more likely the student is to complete a four-year degree. With more Texans holding baccalaureate degrees, the state would be better able to compete economically without having to import talent and knowledge.

CSHB 298 would balance the interests of institutions of higher education and students needing a clear path to a baccalaureate degree. While the bill might require administrative work and faculty adjustment at institutions, the current system is costing families and students time and money and creating a barrier to college completion. Requiring institutions to form articulation agreements only with schools from which they receive at least 5 percent of their transfers would allow institutions to focus on accepting credits from those schools.

CSHB 298's move to include administrators on the curriculum advisory committees would not greatly alter their current composition, which often includes non-faculty members who have backgrounds in specific academic disciplines.

OPPONENTS SAY:

CSHB 298 could result in in an outsized solution that may not resolve the issues it seeks to address. Higher education institutions traditionally have had local control to determine which courses and course outcomes are appropriate for transfer into their degree programs. This has given these institutions a degree of quality control over the graduates who graduate from their institutions. The bill could undermine this discretion and control, directing institutions to accept courses they otherwise might not.

Many schools already have articulation agreements and accept transfer credits without issue. Requiring universities to establish articulation agreements with junior colleges that send only 5 percent of total transfers could result in agreements that conflict with the schools that send the other 95 percent. It would be better to base credit transfer agreements on alignment between academic programs.

CSHB 298 could create a cost and administrative burden to four-year and junior colleges and cause confusion for students. It might be difficult for

institutions to post information about frequently transferred courses on their websites in a manner that adequately and accurately reflected all the relevant information and variables.

Allowing the addition of college and university administrators to the core curriculum and course-specific core curricula advisory committees might mean fewer spots for faculty, who likely know the most about the academic disciplines in which students would have to meet learning expectations.

OTHER OPPONENTS SAY:

CSHB 298, while allowing flexibility for institutions to communicate and craft unique solutions with their frequent feeder schools, could allow too much flexibility. Defining "broad academic disciplines" might not address existing confusion because of their expansive nature. The bill instead should require schools to state exactly which courses lower-division students should be taking to obtain certain degrees at higher education institutions.

SUBJECT: Statutorily dedicating sporting goods sales tax revenue to parks

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Springer, C. Turner, Wray

0 nays

1 absent — Parker

WITNESSES: For — George Bristol; (*Registered, but did not testify*: Lindsey Baker, City of Denton; Jeff Coyle, City of San Antonio; David Sinclair, Game Warden Peace Officers Association; Evelyn Merz, Lone Star Chapter Sierra Club; Cyrus Reed, Lone Star Chapter Sierra Club; Allen Beinke, San Antonio River Authority; Kaleb McLaurin, Texas and Southwestern Cattle Raisers Association; David Weinberg, Texas League of Conservation Voters; Shanna Igo, Texas Municipal League; Scott Swigert, Texas Recreation and Parks Society; Ron Hinkle, Texas Travel Industry Association; Joey Park, Texas Wildlife Association; Max Jones, The Greater Houston Partnership; Chloe Lieberknecht, The Nature Conservancy)

Against — None

On — Carter Smith, Texas Parks and Wildlife Department; (*Registered, but did not testify*: Brad Reynolds and Eric Stearns, Comptroller of Public Accounts)

BACKGROUND: Tax Code, sec. 151.801 provides that 94 percent of sales taxes collected on sporting goods are deposited to the credit of the Parks and Wildlife Department. The remaining 6 percent is credited to the Texas Historical Commission.

DIGEST: CSHB 158 would require that funds from the sales tax on sporting goods deposited in Parks and Wildlife Department accounts be appropriated only for:

- acquiring, operating, maintaining, and making capital improvements to parks;
- assisting local parks; or
- funding state contributions for Parks and Wildlife Department employee benefits.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 158 would be an important step forward for budget transparency and would allow the Texas Parks and Wildlife Department to receive the entire amount raised by the sporting goods sales tax. Even though money raised by the sporting goods sales tax is required to be deposited to the Parks and Wildlife Department, those funds may be appropriated by the Legislature for purposes that have no relation to parks. In recent years the department has received substantially less than the 94 percent of sporting goods sales tax revenue it was supposed to receive. This bill would ensure that the taxes went to their intended purpose and that the Parks and Wildlife Department received sufficient funding to develop and maintain Texas' parks.

The bill would give the department a predictable revenue source with which to base planning for projects and development. Just within the past 10 years, appropriations for state and local parks from the sporting goods sales tax have varied from a low of $21 million to a high of $62 million. This variance prevents funds from be used as effectively as possible. For example, the Parks and Wildlife Department is not able to expand park operations that could impose costs in future years because the department's funding could be cut, which could jeopardize its initial investment.

The benefits from building and maintaining parks are many and varied. Texas' population has expanded greatly, and metropolitan areas are growing outward quickly. With that growth comes expanded needs for open spaces and the development of parks where Texans can enjoy the outdoors.

The Parks and Wildlife Department has grant programs which provide

assistance to local entities wishing to develop both urban and suburban parks. Some of these grant programs have driven more than $16 of investment for every dollar provided by the state. Yet, because of the generally low and unpredictable funding the department receives, there are many strong grant proposals which have not received funding.

Although the Legislature would lose discretion over some funds, this is not necessarily a bad thing. Parks are important to the state, attracting tourism and providing spaces for Texans to enjoy nature. This bill would do nothing unique, as many funds are dedicated to particular purposes. Current law clearly intends for sporting goods sales tax revenue to fund parks, and this bill would accomplish that purpose.

OPPONENTS SAY:

CSHB 158 would statutorily dedicate certain funds for parks and disallow those funds to be used for any other purpose. While funding parks and green spaces is important, the Legislature should not handicap its ability to address critical budget gaps in vital areas such as public education or health and human services in future biennia.

NOTES:

The Legislative Budget Board’s fiscal note indicates that the bill would have a negative impact to general revenue related funds of about $145 million through fiscal 2016-17.

SUBJECT: Fees charged by pharmacy benefit managers for adjudication of claims

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Vo, Workman

0 nays

WITNESSES: For — Rene Garza, Alliance of Independent Pharmacists and Texas Pharmacy Association and Texas Pharmacy Business; Kenneth Cattles, Texas Independent Pharmacies Association; Miguel Rodriguez and Daniel Vela, Texas Pharmacy Business Council; (*Registered, but did not testify*: Audra Conwell, Alliance of Independent Pharmacists of Texas; Dennis Wiesner, HEB; Neftali Partida, Houston Methodist Hospital System; Survam Patel, Southside Pharmacy; Bradford Shields, Texas Federation of Drug Stores; J.D. Fain, Duane Galligher, Tammy Gray, and Edgar Walsh, Texas Independent Pharmacies Association; Justin Hudman, Texas Pharmacy Association; Amanda Fields and Bill Moore, Texas Pharmacy Business Council; John Heal, Texas TrueCare Pharmacies; Morris Wilkes, United Supermarkets; Karen Reagan, Walgreen Company; Nathan Rawls)

Against — Allen Horne; (*Registered, but did not testify*: Wendy Wilson, CompPharma; Juliana Kerker, Express Scripts)

On — Debra Diaz-Lara, Texas Department of Insurance

BACKGROUND: Insurance Code, sec. 4151.151 defines a "pharmacy benefit manager" to mean a person, other than a pharmacy or pharmacist, who acts as an administrator in connection with pharmacy benefits. Pharmacy benefit managers can contract with health insurance plans and pharmacies to process prescription drug claims on behalf of a health insurance plan.

Insurance Code, sec. 1213.005 prohibits a health insurance plan from directly or indirectly charging or holding a health care professional, health care facility, or person enrolled in a health insurance plan responsible for a fee for the adjudication of a health care claim.

DIGEST:

HB 255 would prohibit a health insurance plan issuer or a pharmacy benefit manager from directly or indirectly charging or holding a pharmacist or pharmacy responsible for a fee for any step of or component or mechanism related to the claim adjudication process, including:

- the adjudication of a pharmacy benefit claim;
- the processing or transmission of a pharmacy benefit claim;
- the development or management of a claim processing or adjudication network; or
- participation in a claim processing or adjudication network.

The bill would take effect September 1, 2015. The bill's provisions would not affect the terms of a contract entered into or renewed before September 1, 2015, until a renewal of the contract that occurs on or after that date.

SUPPORTERS SAY:

HB 255 would bring pharmacy benefit managers in line with existing statutes prohibiting health insurance plans from charging a fee for the adjudication of a health care claim. Since 2005, Insurance Code, sec. 1213.005 has prohibited a health insurance plan from charging such a fee, yet pharmacy benefit managers processing prescription drug claims on the behalf of health insurance plans continue to charge pharmacies, particularly independent pharmacies, an extra "transaction" or "transmission" fee on top of their regular fee for processing a prescription drug claim.

These fees are usually small and hidden under different names in pharmacy benefit managers' contracts with pharmacies, but can add up, costing independent pharmacies sometimes hundreds of thousands of dollars per year. These fees are unnecessary and should not be included in pharmacy benefit manager's contracts with pharmacies because they are technically prohibited under existing state law governing health insurance plans.

Comprehensive language in the bill is necessary to make clear in statute that pharmacy benefit managers cannot charge a fee related to the claim adjudication process, regardless of the terminology used to justify the fee.

OPPONENTS SAY:

Pharmacy benefit managers already have agreed to stop charging fees for the adjudication of a pharmacy benefit claim related to the processing or transmission of a pharmacy benefit, but the bill's remaining prohibitions related to development of and participation in a claim processing network are too broad. Pharmacy benefit managers need to charge fees for pharmacy credentialing and other legitimate business expenses that are technically related to the adjudication of prescription drug claims. The bill could prohibit pharmacy benefit managers from charging these necessary fees.

SUBJECT: Increasing fees in district and county courts at law

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Farrar, Clardy, Hernandez, Laubenberg, Raymond, Schofield, S. Thompson

0 nays

2 present not voting — Smithee, Sheets

WITNESSES: For — Teresa Kiel and Caroline Woodburn, County and District Clerks' Association of Texas; (*Registered, but did not testify*: Seth Mitchell, Bexar County Commissioners Court; Heather Hawthorne, Patti Henry, Cary Roberts, Diane Hoefling, and Donna Brown, County and District Clerks' Association of Texas; Charles Reed, Dallas County Commissioners Court; Mark Mendez, Tarrant County Commissioners Court; Rick Thompson, Texas Association of Counties; John Dahill, Texas Conference of Urban Counties; Conrad John, Travis County Commissioners Court)

Against — None

On — (*Registered, but did not testify*: Laura Upchurch)

BACKGROUND: Government Code, ch. 25 provides that in certain counties and for certain cases, the district clerk in a county serves as the clerk of a county court at law.

DIGEST: HB 2182 would increase fees for:

- a defendant convicted by a jury in a county court, a county court at law, or a district court from $20 to $50;
- civil cases in which a person applied for a jury trial in district court from $30 to $50;
- civil cases in which a person applied for a jury trial in a county court or statutory county court from $22 to $50; and
- filing fees for claims against estates from $2 to $10.

HB 2182 would allow courts to assess the $50 administrative fee authorized by Local Government Code, sec. 117.055 when returning cash funds deposited with the court for a bail bond.

Under the bill, district court clerks would be allowed to collect a $10 court records archive fee for the filing of a suit in any court in the county for which the district clerk accepts filings until September 1, 2019. On or after that date, the fee would be $5.

The bill would allow district clerks to collect fees for performing services related to matters filed in statutory county courts, in the same amount as fees allowed for services performed at a district court.

The bill would allow a county court clerk at a probate court to collect a filing fee of $25 for filing certain documents, regardless of the length of the document, after the filing of an order approving the inventory and appraisement or more than 120 days after initial filing of an action.

This bill would take effect on September 1, 2015. The increases in fees would apply only to fees that became payable on or after the effective date.

SUPPORTERS SAY:

HB 2182 would increase court fees to reflect the amount that court administration costs have increased in the years and sometimes decades since these fees were last adjusted. For example, the number of jurors who respond to a jury summons has decreased to about 30 percent, so to fill a jury panel of 60, 300 people must be summoned. The postage cost alone for mailing 300 summonses would be nearly $150. The fee for bail bonds also would compensate the county for the accounting and administrative expense incurred in handling registry funds.

HB 2182 would serve to create uniformity between the fees charged by county courts and those charged by district courts. This uniformity would make court administration easier for district clerks who handle filings for both district and county courts. It also would give third parties filing suit in these courts predictability and uniformity in the costs involved with filing suits.

OPPONENTS SAY:

HB 2182 would impose increased court costs on defendants, many of whom already lack adequate financial resources to pay the fees and court costs required of them under existing law.

The bill would continue the steady increase of fees piled onto civil litigants. Eventually, these fees will rise to point where civil justice is unavailable to the public.

Additionally, litigants often file their cases in county courts because of the lower filing cost. The uniformity created by this bill could lead to decreased filings in county courts and increased filings in district courts.

SUBJECT: Requiring that candidates for public office be registered to vote

COMMITTEE: Elections — favorable, without amendment

VOTE: 5 ayes — Laubenberg, Fallon, Israel, Phelan, Schofield

0 nays

2 absent — Goldman, Reynolds

WITNESSES: For — William Fairbrother, Texas Republican County Chairmen's Association; (*Registered, but did not testify*: Rachael Crider, Cheryl Johnson, and Sheryl Swift, Galveston County Tax Office; Kat Swift, Green Party of Texas; Willie O'Brien, Mountain View College Student Government Association; Glen Maxey, Texas Democratic Party; and five individuals)

Against — None

On — (*Registered, but did not testify*: Beth Cubriel, Republican Party of Texas; Ashley Fischer, Office of the Secretary of State; Keith Ingram, Office of the Secretary of State, Elections Division)

DIGEST: HB 484 would stipulate that a person was not qualified for public elective office unless the person was registered to vote. The bill would create an exception to this requirement for an office for which the U.S. Constitution or the Texas Constitution prescribed exclusive qualification requirements.

The bill would specify a date by which a candidate for a public elective office in Texas had to be registered to vote in the territory from which the office was elected.

This bill would take effect September 1, 2015, and would apply only to candidates or officers whose term of office began on or after that date.

SUPPORTERS SAY: HB 484 would ensure that those seeking office in Texas were active participants in the electoral process. By requiring that those seeking office

be registered to vote in the territory that elected them, this bill would apply to elected officials the same rules as the people who voted for them.

This bill also would help confirm that those who ran for office were residents of the territory that elected them. Candidates sometimes are challenged on whether they meet residency requirements, and voter registration could provide some information about the candidate's residency.

OPPONENTS SAY:

HB 484 would place an unnecessary restriction on ballot access by forcing candidates to register to vote before running for office. The right to register to vote comes with an equal right not to register. Punishing the decision not to register by denying someone the right to run for office could be an infringement on freedom of association and freedom of speech. Voters are fully capable of deciding whether a non-registered candidate is qualified to represent them, and voters should make that decision, rather than the Legislature.

SUBJECT: Ability of physicians to refer patients to out-of-network providers

COMMITTEE: Insurance — committee substitute recommended

VOTE: 8 ayes — Frullo, Muñoz, G. Bonnen, Guerra, Meyer, Paul, Sheets, Workman

0 nays

1 absent — Vo

WITNESSES: For — Dan Chepkauskas, Patient Choice Coalition of Texas; Fiaz Zaman, TASCS; Vim Head; (*Registered, but did not testify*: Wayne Chan and Karen Yates, Altus Infusion; Lee Loftis, Independent Insurance Agents of Texas; Dianne Wheeler, League of Women Voters of Texas; Jaime Capelo, MEDNAX Medical Group, Texas Chapter American College of Cardiology; Kyle Frazier, Patient Choice Coalition of Texas; Bill Pewitt, Texas Association for Home Care and Hospice;; Anjanette Wyatt, Texas Pharmacy Association, Alliance of Independent Pharmacists, Texas Association of Independent Pharmacy Owners; Mark Hanna, Texas Podiatric Medical Association; Vilinh Nguyen, Texas Southern University College of Pharmacy; Amy Kyle, TXASCS; and 10 individuals)

Against — None

On — Debra Diaz-Lara, Texas Department of Insurance

DIGEST: CSHB 574 would prohibit a health maintenance organization (HMO) from terminating the participation of physician or a provider in an HMO's network solely because the physician or provider informed an enrollee of the full range of available physicians and providers, including out-of-network providers. The bill would define an "out-of-network provider" to mean a physician or health care provider who is not a preferred provider.

Under the bill, an HMO could not contractually prohibit, attempt to prohibit, or discourage a physician, dentist, or provider from discussing or communicating in good faith with a patient or patient's designee the

availability of in-network and out-of-network facilities for the treatment of a patient's medical condition.

These prohibitions would not apply to the state's Children's Health Insurance Program, the state's health insurance program for qualified alien (legal immigrant) children, or a Medicaid program, including a Medicaid managed care program operated under Government Code, ch. 533, which governs implementation of Medicaid managed care programs.

The bill also would prohibit an insurer from terminating or threatening to terminate an insured person's participation in a preferred provider benefit plan solely because the person used an out-of-network provider. The bill would specify that an insurer could not in any manner prohibit, attempt to prohibit, penalize, terminate, or otherwise restrict a preferred provider from communicating with an insured person about the availability of out-of-network providers for the provision of the person's medical or health care services. An insurer could not terminate a preferred provider's contract or otherwise penalize the provider solely because the provider's patients used out-of-network providers for medical or health care services.

Except in the case of a medical emergency, an insurer could contractually require a preferred provider to disclose the following information to the insured person before the provider could make an out-of network referral:

- that the insured person could choose a preferred provider or an out-of-network provider;
- if the insured person chose the out-of-network provider, the person could incur higher out-of-pocket expenses; and
- whether the preferred provider had a financial interest in the out-of-network provider.

In addition to the expedited review already required under existing statute to be provided to a practitioner whose participation in a preferred provider benefit plan was terminated, the bill would require an insurer to provide to the terminated practitioner all information on which the insurer wholly or partly based the termination. This information would include the economic profile of the preferred provider, the standards by which the provider was measured, and the statistics underlying the profile and

standards.

The provisions in the bill would apply to an insurance policy, insurance or HMO contract, or evidence of coverage delivered, issued for delivery, or renewed starting January 1, 2016. All provisions in the bill would apply only to a HMO contract entered into or renewed starting September 1, 2015, except those provisions exempting certain health insurance plans, defining an out-of-network provider, and prohibiting an insurer from terminating or threatening to terminate an insured person's participation in a preferred provider benefit plan solely because the insured person used an out-of network provider.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

Health insurance plans currently can cancel a physician's contract with an insurer for referring a patient to a specific out-of-network health care provider. CSHB 574 would give clear guidance in statute to discourage health insurance carriers from this practice and would allow physicians to serve their patients by occasionally sending them to an out-of-network provider as needed without the threat of harm to a physician's professional livelihood. The bill also would protect a patient's contractual right to seek medical treatment with any health care provider of the patient's choice.

Terminating or threatening to terminate a physician's contract for referring a patient to an out-of-network provider is overly punitive and reduces access to health care and continuity of care for the terminated physician's patients. Health insurance plans already have incentives for patients to stay in-network; terminating a physician's contract for simply referring a patient to an out-of-network provider is not necessary.

OPPONENTS SAY:

One of the ways health insurance plans reduce costs is by restricting a patient's choice of providers. CSHB 574 could increase costs of a health insurance plan by reducing an insurer's ability to penalize providers who referred patients insured under a certain plan to out-of-network providers.

SUBJECT: Authorizing all counties to adopt a fire code

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 6 ayes — Coleman, Farias, Romero, Spitzer, Tinderholt, Wu

2 nays — Burrows, Schubert

1 absent — Stickland

WITNESSES: For — Jim Allison, County Judges and Commissioners Association of Texas; David Mintz, Texas Apartment Association; Donald Lee, Texas Conference of Urban Counties; (*Registered, but did not testify*: Jimmy Chew, City of Stephenville; Craig Pardue, Dallas County; Charles Reed, Dallas County Commissioners Court; Donna Warndof, Harris County; Scott Kerwood, Hutto Fire Rescue (Williamson County Emergency Services District #3); Mark Heinrich, Lubbock County; Don Allred, Oldham County, the Texas Association of Counties; Rick Thompson, Texas Association of Counties; Steven Garza, Texas Association of Realtors; Randy Cain, Texas Fire Chiefs Association; Betty Wilkes, Texas Fire Chiefs Association; David Weinberg, Texas League of Conservation Voters; David Lancaster, Texas Society of Architects; Conrad John, Travis County Commissioners Court; Clarence Clark)

Against — Joe Daughtry, Texas Fireworks Association; Eric Glenn, Texas Pyrotechnic Association; (*Registered, but did not testify*: Laramie Adams, Texas and Southwestern Cattle Raisers Association; Marissa Patton, Texas Farm Bureau; Roy Callais)

BACKGROUND: Local Government Code, sec. 233.061(a) allows the commissioners court of a county with a population of more than 250,000 or a county adjacent to a county with a population of more than 250,000 to adopt a fire code and rules necessary to administer and enforce the fire code.

DIGEST: HB 684 would allow the commissioners court of any county to adopt a fire code and rules necessary to administer and enforce the fire code. This bill would take immediate effect if finally passed by a two-thirds

record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

HB 684 would provide more counties with the authority to adopt a fire code if the county concluded it was necessary. Smaller counties currently are prohibited from adopting a fire code, and the bill would eliminate this exclusion.

There are 254 counties in Texas, and by some estimates current law prohibits about 172 of them from developing their own fire code. This bill would benefit smaller counties that were becoming more populous and wanted to establish a fire code for the safety of their residents.

Fire codes are the first line of defense in fire safety. This bill would be a step toward preventing another disaster like the fertilizer plant explosion in West, Texas. Less populated counties in rural areas might not have a fully dedicated fire department and have to rely on volunteer firefighters or fire departments from neighboring areas. Allowing all counties to adopt fire codes would be an effective way to help prevent fires and save lives.

The bill would not create a burden on fireworks vendors or other entities. While more counties could adopt fire codes, the codes would have to conform to standards provided in the International Fire Code and the Uniform Fire Code, as required by Local Government Code, sec. 233.062(c). Both the International Fire Code and the Uniform Fire Code are widely known regulatory standards for fire safety.

OPPONENTS SAY:

HB 684 should provide consideration for businesses that already abide by certain state standards, such as fireworks vendors. Fireworks vendors are temporary businesses that operate only 24 days of the year and must adhere to certain state requirements and inspections. An exception should be made for these vendors that already have passed rigorous state standards.

Giving counties discretion to develop these codes could result in standards that were excessively stringent. Under Local Government Code, sec. 233.062(c)(2), counties that adopt their own fire codes may exceed standards set by the International Fire Code and the Uniform Fire Code.

Allowing more counties to adopt strict fire codes could become a burden for these vendors.

The bill also should make exceptions for private operators of smaller agricultural businesses. The county might adopt fire codes applicable to large industrial farms and plants that handle explosive substances, but smaller agricultural businesses could be burdened by having to adhere to these high standards.

HB 684 should require that counties seek professional assistance from knowledgeable experts in fire safety to adopt or amend fire codes. Such a requirement would ensure that the codes were practical and fair for interested parties.

OTHER OPPONENTS SAY:

Instead of authorizing counties to develop their own standards, Texas should develop a statewide fire code. Most other states have a statewide fire code for commercial establishments and multifamily dwellings. The state should adopt centralized standards to prevent and prepare for fire-related challenges.

NOTES:

The Senate companion bill, SB 327 by Hinojosa, was scheduled for public hearing today in the Senate Intergovernmental Relations Committee.

SUBJECT: Exoneration review commission to examine wrongful convictions

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Herrero, Moody, Canales, Shaheen, Simpson

0 nays

2 absent — Hunter, Leach

WITNESSES: For — Cory Session, Innocence Project of Texas; Ana Yanez Correa, Texas Criminal Justice Coalition; Amanda Marzullo, Texas Defender Service; and six individuals; (*Registered, but did not testify*: David Gonzalez, Texas Criminal Defense Lawyers Association; Scott Henson, Texas Criminal Justice Coalition; Joshua Houston, Texas Impact; Yannis Banks, Texas NAACP; Jennifer Allmon, The Texas Catholic Conference of Bishops; Emely K. Smith)

Against — (*Registered, but did not testify*: Kelley Shannon, Freedom of Information Foundation of Texas; Justin Wood, Harris County District Attorney's Office)

On — John Beauchamp, Texas Commission on Law Enforcement; Jim Bethke, Texas Indigent Defense Commission; David Slayton, Texas Office of Court Administration, Texas Judicial Council; (*Registered, but did not testify*: Seana Willing, State Commission on Judicial Conduct)

DIGEST: CSHB 48 would create the Timothy Cole Exoneration Review Commission. The bill would establish the composition of the commission and its duties and authority and would outline its operations.

**Commission composition.** The commission would be composed of the following nine members or, in some cases, their designee:

- the presiding judge of the Texas Court of Criminal Appeals;
- the chief justice of the Texas Supreme Court;
- a district judge appointed by the presiding judge of the Court of

Criminal Appeals;

- the presiding officer of the Texas Commission on Law Enforcement;
- the presiding officer of the Texas Indigent Defense Commission;
- the presiding officer of the Texas Forensic Science Commission;
- the chair of the Senate Committee on Criminal Justice;
- the chair of the House Committee on Criminal Jurisprudence; and
- the president of the State Bar of Texas.

The commission could act only upon concurrence of at least five members. It would elect its presiding officer and could hire a staff.

**Duties.** The commission would be required to thoroughly review and examine all cases in which an innocent person was convicted and exonerated, including convictions vacated based on a plea to time served to:

- identify the causes of wrongful convictions and suggest ways to prevent future wrongful convictions and improve the reliability and fairness of the criminal justice system;
- determine errors and defects in the laws, evidence, and procedures applied or omitted in a case;
- identify errors and defects in the Texas criminal justice system in general;
- consider suggestions to correct the errors and defects through legislation or procedural changes;
- identify procedures, programs, and education or training opportunities to eliminate or minimize the causes of wrongful convictions; and
- collect and evaluate information from an actual innocence exoneration reported to the commission by a state-funded innocence project.

The commission also would be required to review and examine each case in which the Court of Criminal Appeals had made a final ruling on a writ of habeas corpus (a type of appeal typically claiming a violation of constitutional rights) granted for actual innocence on or after January 1,

1994, and each case in which a commutation or pardon was granted before January 1, 1994, based on a claim of actual innocence. These reviews would:

- identify apparent breaches of professional responsibility or misconduct by attorneys, judges, or criminal justice system personnel that is revealed in any habeas review process existing in the case;
- refer any apparent breach of professional responsibility or misconduct to the State Commission on Judicial Conduct, the State Bar, the Texas Commission on Law Enforcement, the Office of the Attorney General, or other appropriate offices;
- identify patterns in apparent breaches of professional responsibility or misconduct by attorneys, judges, or others, or errors or defects in the criminal justice system that impact the pretrial, trial, appellate, or habeas review process; and
- consider and suggest legislative, training, or procedural changes to correct patterns, errors, and defects identified by the commission.

The commission would have to consider potential implementation plans, costs, savings, and the impact on the criminal justice system for each potential solution it identifies.

In its first biennium in operation, the commission would have to give particular attention to reviewing and updating the work of the Timothy Cole Advisory Panel on Wrongful Convictions established by the 81st Legislature. After that, in each biennium the commission would be required to monitor the progress and implementation of the recommendations made in the first biennium. The commission would have to determine future items for study by identifying up to 10 prominent criminal justice issues to consider. The chief justice of the Texas Supreme Court and the presiding judge of the Court of Criminal Appeals would then choose up to six issues to be studied by the commission.

The commission would be authorized to assist in training and education for those involved in the criminal justice matters of investigation, prosecution, defense, trial, or appeal.

**Reports.** The commission would be required to compile and issue an annual report of its findings and recommendations and could compile interim reports. These reports could be issued only with the concurrence of at least six members.

Reports would have to be submitted to the governor, the Legislature, and the Texas Judicial Council by December 1 of even-numbered years or within 60 days of issuance, whichever came first.

Official reports would have to be made public on request. The working papers and records of the commission and its members and staff would be exempt from the public disclosure requirements in Government Code, ch. 552.

Law school legal clinics or programs that receive financial support from the Texas Indigent Defense Commission would be required to submit a report to the commission on their annual work, including information about innocence claims they handled.

**Commission operations.** The commission would exist under the Texas Judicial Council but be independent of the council. It would be administratively attached to the Office of Court Administration, which would be required to provide administrative assistance to the commission, subject to available funding.

At least annually, the commission would have to conduct a public hearing that included a review of its work. The commission would have to meet in Austin at least once a year, but could meet other times and places.

The commission would be able to enter into contracts for necessary or appropriate research, analysis, and professional services to facilitate its work or to complete the review and examination of a case with a commutation, pardon, or final ruling of actual innocence on a writ of habeas corpus.

The commission would be authorized to request that state entities or political subdivisions provide information to the commission, and the entities would be required to comply unless the disclosure was prohibited.

Any confidential information that the commission received would remain confidential and not subject to public disclosure requirements.

Subject to available funding, the commission could request assistance from the Legislative Budget Board and any state-supported university. The commission also could request the assistance of other state agencies and officers, which would be required to assist the commission.

The bill would establish operating requirements for the commission, including member qualifications, conflicts of interest, grounds for removal, commission member training and policies on gifts, grants, and donations. Commission members would not be compensated but could be reimbursed for expenses, subject to available funds.

**Advisory panel.** The commission would be authorized to receive advice and guidance from an advisory panel named by the bill. The panel would have three members, including the president of the Texas Criminal Defense Lawyers Association and the chair of the board of the Texas District and County Attorneys Association or their designees. It also would have either the director of the Innocence Project of Texas or a representative of one of the innocence projects at the University of Texas Law School, the University of Houston Law Center, or the Thurgood Marshall School of Law. The representative from the innocence groups would serve on a rotating basis.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSHB 48 is necessary to help prevent the wrongful convictions of innocent people. The wrongful conviction and imprisonment of any innocent person is a miscarriage of justice that carries with it a moral obligation to prevent additional miscarriages of justice. The bill would be the next step after the Timothy Cole Advisory Panel on Wrongful Convictions, created by the 81st Legislature to advise the state's Task Force on Indigent Defense in studying wrongful convictions, which finished its assignment in 2010. The Legislature has enacted many of the recommendations of the panel, but more needs to be done.

In Texas, there have been at least 200 exonerations after wrongful convictions, according to the National Registry of Exonerations. Many of these inmates served decades in prison before being exonerated through DNA evidence or on other grounds. Those wrongfully convicted lose their freedom along with family, jobs, and parental rights. The tragedy of wrongful convictions can affect individuals' dignity and can extend beyond those who are irreparably harmed to society as a whole. A wrongful conviction may mean that a guilty person remains unpunished and possibly free in society, endangering the public and eroding confidence in the criminal justice system.

The bill would address the issue of wrongful convictions by establishing a body to examine certain cases and identify the root causes of wrongful convictions and suggest ways to prevent future cases. A commission would look at the criminal justice system as a whole to identify errors and defects and patterns leading to wrongful convictions. By identifying ways to address any issues, the commission would help the state learn from its past mistakes and make changes to prevent future ones. An exoneration commission could examine cases similarly to the way a safety board reviews transportation accidents.

Commission members would represent all facets of the criminal justice system from pretrial through appeal to ensure a knowledgeable, thorough examination of issues. The commission would be unbiased and together be able to take a broad view of the criminal justice system.

The need for an exoneration commission is not eliminated because certain facets of the criminal justice system, such as indigent defense, have been reformed in recent years or because the Legislature is considering additional changes this session. These efforts can be piecemeal or reactions to one case and do not necessarily identify systemic failures remaining in the criminal justice system.

The Legislature needs to create a state entity dedicated to examining exonerations and recommending systemic changes because currently there is no adequate mechanism or effort to do so. Existing state entities do not have the manpower, resources, or mandate to examine past exonerations.

The exoneration of individuals through the judicial or clemency systems does not focus on the criminal justice system as a whole. Innocence projects, such as those at some Texas law schools, focus on individual cases seeking exoneration and not on past cases or systemic issues. With this diffusion of efforts, no entity is responsible or accountable for looking at wrongful convictions as a whole. The commission created by the bill would have the authority of the state behind it, be directly tied to lawmakers with the power to make changes, and be accountable to the public through legislative oversight.

Fears about the commission overreaching its authority are unfounded because the bill clearly outlines the commission's limited powers and duties. The commission would not seek exonerations, re-open cases, or exercise any appellate authority but would only review certain cases that had reached their conclusion. It would not conduct investigations or make rulings. The commission's reviews involving writs of habeas corpus would apply only to ones with final rulings granted for actual innocence and cases with a commutation or pardon based on actual innocence. The examination of the writs would involve numerous things, including only identifying apparent breaches of responsibility or misconduct, not taking any actions. The commission would have no enforcement powers or disciplinary authority but would refer any apparent breaches of responsibility or misconduct to other entities responsible for such matters.

The commission's authority to enter into contracts would be limited to research, analysis, and professional services, not other things such as testing or autopsies. This authorization would be necessary so that it could adequately examine cases.

Fears that an innocence commission would erode support for the death penalty are unfounded. The death penalty itself is not a cause of wrongful convictions, which is what the commission would be charged with examining. The commission would have no authority to advocate for any position related to the death penalty. The Legislature would have oversight of the commission and the power to revise, change, or eliminate it if its work strayed from legislative mandates.

The commission's limited mission and legislative oversight would help

ensure that it did not become an unwieldy bureaucracy. In addition to having general oversight as it does with other entities, the Legislature would control appropriations to the commission to prevent it from growing beyond what the Legislature desired.

The cost of the bill is small compared to the costs of wrongful convictions. The state has paid about $68.9 million in compensation for wrongful convictions in addition to funds used on the prosecution and incarceration of innocent people. The bill would leverage state resources by having the commission administratively attached to the Office of Court Administration and allowing the commission to request assistance from other state entities.

The public would be informed about the work of the commission because official reports would be public. To protect confidentiality in the documents that the commission would be working with, working papers and records would be confidential and information from other entities that was confidential would remain so.

OPPONENTS SAY:

It is unnecessary to create a commission to review wrongful convictions in Texas because the state's criminal justice and legislative systems have checks and balances that work to achieve justice and to identify address and problems.

It is unfair to use cases that may be decades old to argue for an exoneration commission. In the past few decades, the state's criminal justice system has improved substantially, resulting in a just and fair system with rigorous standards and extensive opportunities for review. For example, the state's Fair Defense Act improved the system that provides attorneys for indigent criminal defendants, and the state established a system of post-conviction DNA testing allowing defendants to get testing that was not available when they were convicted. In addition, the state has adopted almost all of the recommendations made in the 2010 Timothy Cole Advisory Panel on Wrongful Convictions.

Post-convictions exonerations and the state criminal justice process could be studied without creating a new government entity. Instead, a focused, limited-time review could be done by existing entities. An interim study

could be conducted by a legislative committee or an existing agency could be given the task. The governor or other state official could appoint a special committee. The Texas Criminal Justice Integrity Unit, established in 2008 by Judge Barbara Hervey, studies the strengths and weaknesses of the criminal justice system and has made recommendations for improvements relating to wrongful convictions. Innocence projects at the state's law schools already investigate alleged claims of innocence and receive some state funding. There also are efforts on the local level.

The bill would invest an innocence commission with inappropriate, broad authority. With authority to ascertain errors in evidence and procedures, to contract for research and analysis, and to identify breaches of responsibility or misconduct, the commission could become an entity working to prove an exoneration, rather than just studying those that have occurred. Other state agencies could have difficulties meeting the commission's requirements for assistance.

An exoneration commission could be used as a backdoor way to erode support for the death penalty in Texas by focusing on certain cases without the benefit of the adversarial process central to the criminal justice system. This process could institutionalize opposition to the death penalty and allow the use of public funds and the weight of the state to further the political goal of eliminating capital punishment, an objective not shared by most Texans.

Creating an exoneration commission would unnecessarily add to state bureaucracy. It would cost the state almost $400,000 per biennium, according to the bill's fiscal note. It could be difficult to abolish a commission because governmental entities tend to grow in scope to justify their continued existence. The bill would establish a process that would institutionalize the commission by requiring it to identify 10 issues and to choose six to study each biennium.

OTHER OPPONENTS SAY:

CSHB 48 should include an exoneree or exoneree's family member on the commission to ensure that their unique perspective was represented.

Working papers, records, and other information of the commission should not be made confidential. This would run counter to the state's policy of

allowing the public access to government records.

NOTES:

The Legislative Budget Board estimates that CSHB 48 would have a negative impact of about $395,000 to general revenue through fiscal 2016-17.

SUBJECT: Certification of certain peace officers for commercial vehicle enforcement

COMMITTEE: Homeland Security and Public Safety — favorable, without amendment

VOTE: 8 ayes — Phillips, Nevárez, Burns, Johnson, Metcalf, Moody, M. White, Wray

1 nay — Dale

WITNESSES: For — Robert Meager, City of Gregory

Against — None

On — (*Registered, but did not testify*: Les Findeisen, Texas Trucking Association; Chris Nordloh, Texas Department of Public Safety)

BACKGROUND: Transportation Code, ch. 644 governs safety standards for commercial motor vehicles. Sec. 644.101 requires the Department of Public Safety (DPS) to establish procedures for the certification of municipal police officers to enforce commercial vehicle safety standards and provides a list of municipalities where police officers are eligible to apply for this certification.

DIGEST: HB 716 would add to the list of municipalities where police officers were eligible to apply for certification to enforce commercial motor vehicle safety standards. It would allow officers from a municipality located in San Patricio County to apply for certification.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY: HB 716 would ensure the safety of Gulf coast communities by allowing certain police officers to enforce commercial vehicle safety standards in San Patricio County, which is located in this region.

Commercial motor vehicle traffic has increased along the Texas Gulf

coast due to more oil and gas-related activity, putting Gulf coast municipalities at a higher risk for motor vehicle accidents. According to the Texas Department of Transportation, deaths from commercial vehicle crashes in Texas rose 51 percent from 2009 to 2013. In that same period, commercial vehicle crashes increased by 40 percent in San Patricio County. HB 716 would allow for the enforcement of regulations that could reduce crashes and save lives in a county with increased traffic and crashes.

HB 716 would allow local law enforcement in areas of San Patricio County to take preventive measures that included proactively inspecting commercial vehicles and pulling over trucks for dangerously overweight loads. There is a lack of active and sustained DPS or sheriff's department commercial vehicle enforcement personnel in smaller counties due to staffing, training, and legislative restrictions. HB 716 would help to address this shortage in one area of the state.

This bill would allow police officers to apply for certification, but it would not automatically grant them authority in the affected municipality. The rigorous certification process requires a minimum of four weeks of initial training and a recertification process every year. The officers who would be granted authority under HB 716 would be well trained, acquiring the necessary specialized skills to inspect commercial vehicles. This training would increase consistency in enforcement.

OPPONENTS SAY:

HB 716 would expand an enforcement mechanism that does not necessarily address the real issue behind commercial motor vehicles crashes. Most commercial motor vehicle crashes are a result of non-commercial motor vehicle drivers who are driving aggressively, are distracted, and are not following state driving laws. The state needs more aggressive traffic enforcement to prevent crashes. Few accidents occur from equipment failures on commercial vehicles, so HB 716 would not necessarily result in a significant decrease in crashes or an increase in safety in the Gulf coast region.

Enforcing commercial motor vehicle safety standards requires highly specialized skills. Officers need to spend substantial time and effort on enforcing commercial vehicle standards to understand them fully and to

be able to enforce them properly. The revenue collected from enforcing safety standards stays in the counties or cities where the enforcement takes place, creating an incentive to have officers enforce commercial vehicle standards locally. However, municipal police officers have many other duties and may not have enough time to devote to learning and enforcing these standards adequately. Police officers should not be allowed to stop and inspect a truck without witnessing a state law violation.

NOTES:

The companion bill, SB 320 by Zaffirini, was considered in a public hearing of the Senate Transportation Committee on April 29.

SUBJECT: Amending meeting requirements for bail bond boards in certain counties

COMMITTEE: County Affairs — committee substitute recommended

VOTE: 9 ayes — Coleman, Farias, Burrows, Romero, Schubert, Spitzer, Stickland, Tinderholt, Wu

0 nays

WITNESSES: For — None

Against — Scott Walstad, Professional Bondsmen of Texas; Richard Gladden; (*Registered, but did not testify*: Wynn Dillard, Professional Bondsmen of Texas; Clarence Clark; John Mccluskey; R. Glenn Smith)

BACKGROUND: Occupations Code, sec. 1704.055 requires the bail bond board in a county with fewer than 50,000 residents to meet at least four times each year during January, April, July, and October at the call of the presiding officer. The bail bond board in a county with at least 50,000 residents must meet once a month and whenever the presiding officer calls.

DIGEST: CSHB 885 would expand the requirement in current law that bail bond boards in counties with fewer than 50,000 residents meet four times each year to apply to counties with fewer than 150,000 residents.

The bill also would require that bail bond boards in counties with fewer than 150,000 residents meet at other times at the call of the presiding officer.

This bill would take effect September 1, 2015.

SUPPORTERS SAY: CSHB 885 would reduce unnecessary meetings for county bail bond boards in counties with fewer than 150,000 residents and, in doing so, allow board members to use their time more productively. Current law requires boards of counties with at least 50,000 residents to meet every month, which is unproductive when there is no new business to conduct. Requiring fewer meetings would increase government efficiency.

This bill also would support local authority by allowing the bond boards to meet more than four times in a year at the call of the presiding officer. The affected county bail bond boards would have the discretion to decide if more than four meetings a year were necessary.

CSHB 885 would not create an undue burden for bail bondsmen in renewing their licenses. To renew a license, a bondsman must file an application with the county bond board at least 31 days before the license is due to expire, and the bondsman can apply for renewal before that date at any time. If the license was set to expire during a three-month period when the board was not scheduled to hold a meeting, the bondsman could plan to renew early or could request another meeting at the discretion of the presiding officer.

OPPONENTS SAY:

CSHB 885 could create a burden on bail bondsmen whose licenses were scheduled to expire during the three-month period that the board did not meet to approve licenses. A bondsman whose license was going to expire during this time might have to convince the presiding officer of the board to meet before the expiration of the license. Bond boards of counties with at least 50,000 residents should continue to be required to meet monthly to ensure bondsmen’s licenses did not expire during gaps between board meetings.